

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2007-0324, In re Teegan F., the court on April 18, 2008, issued the following order:

The father of Teegan F. appeals the probate court order terminating his parental rights. He argues that the probate court erred in finding that he had abandoned Teegan and that termination of his parental rights was in Teegan's best interests. We will assume without deciding that these issues have been preserved for appellate review. We affirm.

Before a court may order the termination of a parent's rights, the petitioning party must prove a statutory ground for termination beyond a reasonable doubt. In re Juvenile 2006-0674, 156 N.H. 1, 4 (2007). One of the grounds is abandonment, which may be found when a trial court finds that the parent has made only minimal efforts to support or communicate with the child. RSA 170-C:5, I (2002). Abandonment is a factual issue to be determined by the probate court; we will affirm that determination unless it is unsupported by the evidence or plainly erroneous as a matter of law. In re Shannon M., 146 N.H. 22, 25 (2001).

The father first argues that the probate court erred in finding abandonment. Teegan was placed under the guardianship of his maternal grandmother in 2004; in 2005, Teegan's mother became co-guardian. The father contends that Teegan's grandmother made greater efforts to maintain contact with Teegan's mother and that, when Teegan's mother regained primary physical custody, she "cut [the father] off from his son." The probate court found that: (1) the father had requested visitation with his son on two occasions in or before 2005; (2) he had made no request for visitation since 2005; and (3) he had not sought to enforce his visitation rights under the guardianship order. These findings belie the father's contention that the separations between him and his child were not his fault. *See id.* at 26.

The court also found that the father had sent one Christmas card and one birthday card since 2004. The court noted the constraints on the father's ability to provide child support given his extended periods of incarceration but found that even when not incarcerated he made no effort to comply with a minimal child support order and since 2004 had never provided any in-kind gifts. These findings are supported by the record. *See In re Noah W.*, 148 N.H. 632, 637 (2002) (considerable weight accorded to probate court's judgment on the credibility of witnesses). Given these findings, we find no error in the probate court's conclusion that the petitioner met her burden in proving

abandonment. See In re Shannon M., 146 N.H. at 25 (probate court may find abandonment if parent has made only minimal efforts to support or communicate with child, or shown only mere flicker of interest).

The father also argues that the trial court erred in finding that termination of his parental rights was in Teegan's best interest. He contends that, in the absence of expert testimony, the probate court could not find that his future contact with Teegan would impose an emotional toll upon Teegan. He also argues that the probate court erred in relying upon evidence of a father-child relationship with the mother's boyfriend and the unlikelihood of "successful, non-traumatic reunification or reintroduction to [the father] in any meaningful way during Teegan's minority." The lack of communication between Teegan and his father after the age of two and the continued extended incarceration of the father are significant factors to be considered in determining whether termination of the father's rights would be in the child's best interests. The probate court also considered Teegan's current age and secure living environment and his "need for relational integration with, and psychological attachment to, those most likely to provide him with consistent and established patterns of life, proper discipline and habits of care." Given the record before us, we affirm the finding of the probate court.

Affirmed.

DALIANIS, DUGGAN and HICKS, JJ., concurred.

**Eileen Fox,
Clerk**